THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO

AND

THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.25379 of 2004

ORDER: (Per the Hon'ble Sri Justice T.Ch.Surya Rao)

The petitioners seek a Writ of *Certiorari* to quash the judgment dated 31-10-2003 passed by the learned Special Court in L.G.C. No.17 of 1997. L.G.C. No.17 of 1997 was field by the petitioners themselves against respondents
1 to 10 herein to declare them as land grabbers and evict them from the application schedule property and for delivery of vacant possession thereof to the petitioners.
That application, at the culmination of enquiry, eventually ended in dismissal. As aforesaid, the petitioners seek to assail the same in the instant writ petition.

The petitioners are the legal heirs of late
Mohd. Jahangir. The land in dispute is in an extent of
Acs.6-22 guntas covered by Survey No.67 of Nekhnampura village in Rajendranagar Mandal, Ranga Reddy District.
Late Jahangir was the original owner thereof, having purchased the same under a registered sale deed bearing document No.310051 dated 01-06-1957 from its original owner Mohd. Sharfuddin. Since then, late Jahangir was in possession as an absolute owner thereof till his death in the year 1975 and his name was registered in Pahani Patrikas.
After the death of Jahangir, heirs of Mohd. Sharfuddin namely Yousufuddin and Fatima Bee, claimed the schedule property.

Therefore, the applicants filed O.S. No.53 of 1987 against Mohd. Yousufuddin and Fatima Bee on the file of the District Munsif, West and South, Saroornagar, Ranga Reddy District for declaration of title, which eventually ended in a decree in their favour on 10-06-1987. When the petitioners obtained a certified copy of pahani for the year 1996,

they noticed the name of the 3rd respondent in the possessor's column thereof. The petitioners never sold the property nor entered into any agreement of sale with anybody in respect of the application schedule property. The 1st respondent was developing a township adjacent to the application schedule property. The 2nd respondent, as Managing Director of the

1st respondent, started interfering with the possession of the applicants, therefore they got published a notice in a Telugu daily newspaper and also filed an application dated

16-12-1996 before the Mandal Revenue Officer for deleting the name of the 3rd respondent in the pahani patrika.

When the applicants were out of station, respondents 1 and 2 encroached upon the application schedule land on

19-12-1996, got it levelled and divided into plots and also laid roads, by converting the agricultural land into

non-agricultural purposes. Respondents 6 to 10 have no right, title or interest in the application schedule property, hence the instant petition.

Pursuant to the notification and individual notice got issued by the Special Court, respondents 6 and 8 to 10 remained *ex parte,* and the 7th respondent died *pendente lite*. The 4th and 5th respondents filed separate counters.

The 1st and 2nd respondents filed a memo adopting the counter

filed by the 5th respondent and the 3rd respondent filed a memo adopting the counter filed by the

4th respondent. A memo to the effect that there are no legal heirs of the 7th respondent has also been filed.

The claim of the respondents seems to be that

Mohd. Sharfuddin, the original pattadar of the application schedule land, mortgaged the land with Mohd. Jahangir in the year 1954 for a period of three years. The 3rd respondent entered into an agreement of sale in the year 1985 to purchase an extent of Acs.4.20 guntas of land under an agreement of sale dated 05-05-1985. One Krupakar purchased an extent of Acs.2-03 guntas of land from Sharfuddin in the year 1973-74 and his name stood registered in the pahanies for some years. The name of Jahangir was also recorded as occupant. On enquiry from the 6th and 7th respondents, the 3rd respondent came to know that the entire land covered by Survey No.67 was mortgaged with possession by late Sharfuddin in the year 1954.

The respondents 6, 7 and others informed the 3rd respondent that Sharfuddin paid the amount and took the mortgage bond from Jahangir. One Nasiruddin claimed an extent of Acs.2.00 of land having purchased the same from Jahangir under an un-registered sale deed dated 16-02-1974. Similarly, Krupakar also claimed to have purchased Acs.4-20 guntas of land from Sharfuddin. The 3rd respondent, therefore, paid money to Nasiruddin and purchased the land of Acs.2-20 guntas from him under a registered agreement of sale in favour of the 4th respondent. Krupakar also paid money and released the deed in the year 1988 in favour of Rajesh and five others. Nasiruddin delivered the agreement of

sale obtained from late Jahangir. The 3rd respondent settled the matter with all persons, who staked their claims in respect of the application schedule property and obtained registered power of attorney from the heirs of Sharfuddin for Acs.4-00 of land and also another document for Acs.2.00 of land.

When there was a proposal to acquire a part of the said land by the Social Welfare Department, the 3rd respondent under the general power of attorney got the dispute settled and took possession of the property. On account of his efforts,

Social Welfare Department dropped the acquisition proposals.

Respondents 3 and 4 sold Acs.6-23 guntas of land to the

5th respondent. Respondents 1 and 2 have been in possession of the same as developers of the 5th respondent.

The stand taken by the 5th respondent seems to be that the decree in O.S. No.53 of 1987 being *ex parte* decree obtained by playing fraud, does not bind them and in fact, there was no sale transaction between late Mohd. Jahangir and Sharfuddin. Since respondents 3 and 4 executed the sale deeds in favour of respondent No.5, he is the absolute owner of the application schedule property.

The 5th respondent purchased an extent of Acs.4-20 guntas of land from Smt. Khaja Bee and others, represented by their general power of attorney holder Puranmal @ Puran Singh son of Prabhatilal, under a registered sale deed dated

22-06-1996. Another bit of Acs.2-02 guntas of land was purchased from Smt. Khaja Bee, represented by her general power of attorney Sri Ramesh Chand, under a registered sale deed dated 07-06-1996 and thus he is the owner and possessor thereof.

Having regard to the competing claims, the Special Court settled the issues as under:

> *"1) Whether the applicants have title to the application schedule property?*
> *2) Whether the rival title set up by the respondents is true and valid?*
> *3) Whether the respondents are land grabbers within the meaning of Act XII of 1982?*
> *4) To what relief?"*

At the time of enquiry, on the side of the applicants, two witnesses were examined and Exs.A-1 to A-16 were got marked. On the side of the respondents, two witnesses were examined and Exs.B-1 to B-50 were got marked.

Appreciating the evidence adduced on either side, the learned Special Court was of the view that the applicants had no right, title and interest in the application schedule property and the 5th respondent was able to prove his right, title and interest in respect of 4/5th share and the rival title set up by respondents 3, 4, 5, 1 and 2 was true, valid and binding on the applicants.

Mr. Syed Shareef Ahmed, learned counsel appearing for the petitioners, represents that the learned Special Court ignored the judgment and decree of the Civil Court passed in O.S. No.53 of 1987, which declared the title of the applicants, and in view of the judgment and decree passed in O.S. No.53 of 1987 non-filing of the title deed is of no consequence.

In view of the dismissal of the suit filed in O.S. No.217 of 1998 seeking to set aside the judgment and decree passed by the Civil Court in O.S. No.53 of 1987 on the ground that fraud was played

upon the Court, there could be no valid and tenable contest for the respondents.

Mr. R. Mahender Reddy, learned counsel appearing for the respondents, represents that an appeal has been sought to be filed assailing the judgment and decree passed in
O.S. No.217 of 1998 and the same is pending at the stage of condonation of delay, and therefore, the judgment in
O.S. No.217 of 1998 cannot be treated as having become final and therefore the decree in O.S. No.53 of 1987 will not bind the respondents, who are not parties thereto, and
inasmuch as, the applicants have not filed any independent title deed, the judgment of the Special Court shall have to be sustained.

The Special Court proceeded on the assumption that the burden to prove that the applicants are the owners of the application schedule property cast heavily on the applicants. Section 10 of the A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') is germane in the context. According to Section 10 of the Act, if it is *prima facie* proved before the Special Court that the land in question is owned by the Government or by a private person, the Court shall presume that the person, who is alleged to have grabbed the land,
is a land grabber and the burden of proving that the land has not been grabbed by him shall be on such person.
The presumption of law shall have to be drawn by the Court and once *prima facie* title is shown by the applicant his adversary shall be presumed as land grabber.
Oblivious of this legal position, the learned Special Court proceeded on the assumption that burden is heavily cast on the

applicant to prove that they are the owners. The certified copy of the decree passed in O.S. No.53 of 1987 has been marked in this case as Ex.A-8, which in our considered view is sufficient enough to constitute a *prima facie* case. Exs.A-2, A-3 to A-6 and A-7 will further buttress the claim of the applicants to reiterate all what is needed is to see a *prima facie* title. Although, the other respondents are not parties to the suit in O.S. No.53 of 1987, for the purpose of considering the *prima facie* title, the documents shall not be ignored in toto. It may be that the respondents while endeavoring to show or discharging their burden to show that they are not the land grabbers may contend that Ex.A-8 may not bind them.

Learned counsel for the writ petitioners represents that the judgment in O.S. No.53 of 1987 is a judgment in *rem* and is binding on the respondents even. In support of his contention, learned counsel seeks to place reliance upon the judgment of the Punjab High Court in ***KIRORI MAL S/o. L. SHAMBHU NATH v. COLLECTOR DELHI STATE, DELHI, AND OTHERS***[1]***.*** It has been held in para 8 of the judgment thus:

> "Once a declaration of title is given it is a declaration in rem and good against the world, and the defendants would check it if they are minded to do so. Any further dealing with respect to such property is at their own risk. The exclusive title of the plaintiff having been declared, any action then taken by the defendant in disregard of such a title would be at the risk of the defendant or transferee leaving completely inviolate the rights and the interest of the plaintiff."

The provisions of Section 41 of the Indian Evidence Act, 1872 (for short 'the Evidence Act") seems to have not been considered by the learned single judge of the Punjab High Court. The facts appear therein to be altogether different.

A judgment to become a judgment in *rem* must necessary satisfy the requirements of Section 41 of the Evidence Act. We are unable to persuade ourselves to concur with the said view expressed by the learned Punjab High Court, with due respect.

Obviously, the judgment and decree passed in O.S. No.217 of 1998 has not been filed before the Special Court since it is a subsequent event. It was rendered on 04-06-2005 by the Additional Junior Civil Judge, Ranga Reddy District. Subsequent events can be taken note of is trite. The significance of the judgment in O.S. No.217 of 1998, has not been considered by the learned Special Court since it was not available by then. The plea that the respondents are not bound by the judgment and decree passed in O.S. No.53 of 1987 perhaps may not be available, once the judgment and decree passed by the Civil Court subsequently in O.S. No.217 of 1998 is concerned.

Much arguments have been addressed by the learned counsel for the respondents that the matter is subjudice, having regard to the fact that an appeal accompanied by the application to condone the delay filed against the judgment and decree in O.S. No.217 of 1998 is pending before the appellate Court. Any judgment by the Civil Court is final, unless it is set aside by the appellate Court. In the absence of any order suspending the operation of the judgment, it can still be considered as a judgment passed by the competent Civil Court having jurisdiction to do so. Mere pendency of appeal will not take away

the efficacy of the judgment.

The learned Special Court seems to have been swayed by Ex.A-45, mortgage bond, in view of the same,

it was of the view that there was no sale transaction and the transaction in between late Jahangir and Sharfuddin was only one of mortgage deed, which was duly redeemed by delivering back Ex.A-44 by Sharfuddin. The Special Court seems to have ignored the judgment passed in

O.S. No.53 of 1987 totally, having regard to the fact that in Exs.A-3 to A-6 pahanies, the name of late Sherfuddin was shown as a pattadar and the name of late Jahangir was shown in the column of the occupant. Had the factum of mortgage been brought to the notice of Patwari, as observed by the learned Special Court in the remarks column, the transaction would have been specifically mentioned to the effect that it was under the occupation of mortgagee. It is not open to go beyond the decree so as to know what has been the evidence that led the Court to come to a particular conclusion. In fact, that exercise seems to have been done by the Special Court while considering Ex.A-8. What is crucial to be considered, having regard to the competing claims of the parties, is Ex.A-8 and the decree in O.S. No.217 of 1998. Since it is a subsequent event, the judgment in O.S. No.217 of 1998, which had been filed for setting aside the judgment passed in O.S. No.53 of 1987 on the ground of fraud could not have been considered, the significance of which needs no emphasis. It is expedient in the interest of justice to remit the matter to the Special Court for fresh consideration, after giving opportunity to both the parties to lead evidence if any.

For the above reasons, the Writ Petition is allowed and the impugned judgment dated 31-10-2003 is hereby set aside and the

matter is remitted to the Special Court for fresh consideration, after hearing both sides and giving opportunity to adduce any further evidence, if any. The costs shall abide the result of the case.

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T. CH. SURYA RAO, J

Date: 06-11-2006

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G. CHANDRAIAH, J

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[1] AIR 1964 PUNJAB 26 (V 51 C 6)